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Federal Communications Commission

FCC 98-317

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Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Bell Atlantic Telephone Cos. |) | CC Docket No. 98-168 |
| Bell Atlantic Tariff No. 1 |) | |
| Bell Atlantic Transmittal No. 1076 |) | |
| |) | |
| BellSouth Telecommunications, Inc. |) | CC Docket No. 98-161 |
| BellSouth Tariff FCC No. 1 |) | |
| BellSouth Transmittal No. 476 |) | |
| |) | |
| GTE System Telephone Cos. |) | CC Docket No. 98-167 ✓ |
| GSTC FCC Tariff No. 1 |) | |
| GSTC Transmittal No. 260 |) | |
| |) | |
| Pacific Bell Telephone Co. |) | CC Docket No. 98-103 |
| Pacific Bell Tariff No. 128 |) | |
| Pacific Bell Transmittal No. 1986 |) | |

MEMORANDUM OPINION AND ORDER

Adopted: November 30, 1998; Released: November 30, 1998

By the Commission: Commissioner Furchtgott-Roth dissenting in part and issuing a statement; Commissioner Tristani issuing a statement.

I. INTRODUCTION

1. In this Order, we conclude our investigation of new access offerings filed by Bell Atlantic, BellSouth, GTE System Telephone Companies (GSTC), and Pacific Bell (collectively, the "incumbent local exchange companies" or "ILECs") establishing Asymmetrical Digital Subscriber Line service ("ADSL service"). All of these offerings, like the service we recently addressed in the *GTE DSL Order*,¹ permit Internet Service Providers

¹ GTE Tel. Operating Cos. GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC 98-292, Memorandum Opinion and Order (rel. Oct. 30, 1998) (*GTE DSL Order*).

(ISPs) to provide their end user customers with dedicated high-speed access to the Internet. The issues designated in our investigation of the ILECs' federal tariffs for ADSL service also are identical to those designated in our investigation of GTE Transmittal No. 1148.² For the reasons set forth in the *GTE DSL Order*,³ we find here that these offerings are interstate services and are properly tariffed at the federal level.⁴ In addition, for the reasons stated in the *GTE DSL Order*, we reject the argument that the possibility of a price squeeze warrants the Commission's transfer to the states of its ratemaking authority with respect to interstate DSL services such as those at issue here.

2. We emphasize that we decide here only the issue designated in our investigations of these ILECs' federal tariffs for ADSL service, which provide specifically for a dedicated connection, rather than a circuit-switched, dial-up connection, to ISPs and potentially other locations. This issue involves the applicability of Commission rules and precedent regarding the provision by an ILEC of special access service. This Order does not consider or address issues regarding whether local exchange carriers are entitled to receive reciprocal compensation when they deliver to information service providers, including Internet service providers, circuit-switched dial-up traffic originated by interconnecting LECs.⁵ Those issues will be addressed specifically in a separate order.

² See GTOC FCC Tariff No. 1, Transmittal No. 1148 (filed May 15, 1998); see also GTE Tel. Operating Cos. GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC 98-292, Memorandum Opinion and Order (rel. Oct. 30, 1998) (*GTE DSL Order*).

³ GTE Tel. Operating Cos. GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC 98-292, Memorandum Opinion and Order (rel. Oct. 30, 1998) (*GTE DSL Order*).

⁴ We emphasize that our decision concerning the jurisdictional treatment of the ILECs' ADSL services is limited to the transport of data from an end user over the ILECs' frame relay/ATM networks. Regulation of circuit-switched voice and data calls carried over the same ADSL-conditioned loop, as part of the end user's standard residential or business service, is unaffected by the ILECs' offering and this decision.

⁵ See, e.g., Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 61 Fed. Reg. 53,922 (1996); Petition for Partial Reconsideration and Clarification of MFS Communications Co., Inc. at 28; Letter from Richard J. Metzger, General Counsel for ALTS to Regina M. Keeney, Chief, Common Carrier Bureau, FCC, June 20, 1997; Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, DA 97-1399 (rel. July 2, 1997); Letter from Edward D. Young, Senior Vice President & Deputy General Counsel for Bell Atlantic and Thomas J. Tauke, Senior Vice President -- Government Relations for Bell Atlantic to Hon. William E. Kennard, Chairman, FCC, July 1, 1998. This question sometimes has been posed more narrowly, i.e., whether an incumbent LEC must pay reciprocal compensation to a competitive LEC that delivers incumbent LEC-originated traffic to ISPs. Because the pertinent provision of the 1996 Act pertains to all LECs, we examine this issue in the broader context. 47 U.S.C. § 251(b)(5).

II. BACKGROUND

3. In separate Orders released in September 1998, the Common Carrier Bureau (Bureau) found that Bell Atlantic Transmittal No. 1976, BellSouth Transmittal No. 476, GSTC Transmittal No. 260, and Pacific Bell Transmittal No. 1986, establishing ADSL services, raised substantial questions of lawfulness and, accordingly, suspended these tariffs for one day, initiated an investigation, and imposed an accounting order.⁶ In addition, the Bureau designated for investigation the question whether these ADSL service offerings constitute interstate access service, thus subject to the Commission's jurisdiction and properly tariffed at the federal level.⁷ The Bureau also solicited comments on whether the Commission should defer to the states the tariffing of DSL services in order to lessen the possibility of a price squeeze.⁸

4. On September 11, 1998, Pacific Bell and BellSouth filed their direct cases. GSTC and Bell Atlantic filed their direct cases on September 25, 1998, and October 6, 1998, respectively. More than forty parties filed comments or oppositions responding to the ILECs' direct cases.⁹ Pacific Bell and BellSouth filed their rebuttals on September 25, 1998; GSTC filed its rebuttal on October 9, 1998; and Bell Atlantic filed its rebuttal on October 22, 1998.

⁶ Bell Atlantic Telephone Cos. Transmittal No. 1076, CC Docket No. 98-168, DA 98-1988 (Com. Car. Bur., rel. Sept. 15, 1998) (*Bell Atlantic Suspension/Designation Order*); Bell South Transmittal No. 476, CC Docket No. 98-161, DA 98-1734 (Com. Car. Bur., rel. Sept. 1, 1998) (*Bell South Suspension/Designation Order*); GTE Telephone Operating Cos. GSTC Transmittal No. 260, CC Docket No. 98-167, DA 98-1838 (Com. Car. Bur., rel. Sept. 11, 1998) (*GSTC Suspension/Designation Order*); Pacific Bell Telephone Co., Pacific Bell Transmittal No. 1986, CC Docket No. 98-103, DA 98-1772 (Com. Car. Bur., rel. Sept. 2, 1998) (*Pacific Bell Suspension Order*).

⁷ Bell Atlantic Telephone Cos. Transmittal No. 1076, CC Docket No. 98-168, DA 98-1988 (Com. Car. Bur., rel. Sept. 15, 1998) (*Bell Atlantic Suspension/Designation Order*); Bell South Transmittal No. 476, CC Docket No. 98-161, DA 98-1734 (Com. Car. Bur., rel. Sept. 1, 1998) (*Bell South Suspension/Designation Order*); GTE Telephone Operating Cos. GSTC Transmittal No. 260, CC Docket No. 98-167, DA 98-1838 (Com. Car. Bur., rel. Sept. 11, 1998) (*GSTC Suspension/Designation Order*); Pacific Bell Telephone Co., Pacific Bell Transmittal No. 1986, CC Docket No. 98-103, DA 98-1772 (Com. Car. Bur., rel. Sept. 2, 1998) (*Pacific Bell Designation Order*).

⁸ *Bell Atlantic DSL Suspension/Designation Order* at ¶ 10; *Bell South DSL Suspension/Designation Order* at ¶ 10; *GSTC DSL Suspension/Designation Order* at ¶ 10; and *Pacific Bell DSL Designation Order* at ¶ 2.

⁹ A list of parties submitting comments is included at Appendix A.

5. The issue whether the ILECs' ADSL service offerings constitute interstate access service is identical to the issue designated in the GTOC tariff investigation.¹⁰ In an Order released October 30, 1998, we concluded our investigation of GTOC Transmittal No. 1148 establishing a new offering, GTE DSL Solutions-ADSL Service.¹¹ In that Order, we found that GTE's ADSL service offering, which permits ISPs to provide their end user customers with high speed access to the Internet, is an interstate service properly tariffed at the federal level.¹²

A. ADSL Tariffs

6. Bell Atlantic. On September 1, 1998, Bell Atlantic filed Transmittal No. 1076, proposing to offer Infospeed Digital Subscriber Line Service, which Bell Atlantic describes as an interstate, dedicated data access service that uses asymmetric digital customer line technology, enabling data to be sent at high speeds over copper facilities.¹³ According to Bell Atlantic, Infospeed DSL Service transports an end user's data from the network interface device (NID) to an Asynchronous Transfer Mode (ATM) port located within the same LATA (Infospeed DSL Connection Point).¹⁴ A passive band filter, known as a splitter, is installed on the end user's side of the NID; the NID divides the frequency band of an end user's line.¹⁵ Bell Atlantic states that the low frequency band continues to be used for voice communications, while the high frequency band is used for data traffic, which is sent and received via a modem supplied by the end user.¹⁶ Bell Atlantic explains that the end user's loop is connected at the wire center to Bell Atlantic's DSLAM, which diverts voice traffic to a voice switch and directs data traffic over dedicated data connections to the Infospeed DSL Connection Point, which can be accessed via Bell Atlantic's ATM network.¹⁷

¹⁰ GTE Tel. Operating Cos. GTOC Transmittal No. 1148, CC Docket No. 98-79, DA 98-1667, at ¶ 12 (Com. Car. Bur., rel. August 20, 1998) (*GTE DSL Designation Order*).

¹¹ GTE Tel. Operating Cos. GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC 98-292, Memorandum Opinion and Order (rel. Oct. 30, 1998) (*GTE DSL Order*).

¹² *GTE DSL Order* at ¶¶ 1, 16.

¹³ Bell Atlantic Description and Justification at Section 1A.

¹⁴ Bell Atlantic Description and Justification at Section 1B.

¹⁵ Bell Atlantic Description and Justification at Section 1B.

¹⁶ Bell Atlantic Description and Justification at Section 1B.

¹⁷ Bell Atlantic Description and Justification at Sections 1A, 1B.

7. Bell Atlantic contends that its Infospeed DSL service will dramatically increase the speed at which consumers can communicate over the Internet and that it will reduce congestion on the public switched network.¹⁸ It states that ISPs and other carriers connect to Infospeed DSL Service using ATM service offered elsewhere in its tariff.¹⁹ Bell Atlantic asserts that while backbone providers, ISPs and other carriers will be the principal customers for its DSL service, the proposed tariff contains no user limitations.²⁰

8. BellSouth. On August 18, 1998, BellSouth filed Transmittal No. 476, proposing to offer ADSL service, which it describes as an interstate data transport service providing a high-speed dedicated connection between an end-user premises and a network service provider.²¹ According to BellSouth, the end user's modem is connected with a 10BaseT connection to the network interface at the end-user premises.²² BellSouth explains that its ADSL service "consists of Virtual Circuit (VC) connection from the Network Interface Device (NID) over an existing facility to a splitter, modem and BellSouth ADSL equipment combination referred to as the DSLAM."²³ BellSouth states that the DSLAM is connected with BellSouth Exchange Access Asynchronous Transfer Mode Service (XAATMS) using frame relay interface capabilities.²⁴ To complete the ADSL service VC path, BellSouth states that network service providers can connect their networks to the BellSouth XAATMS using special access services located elsewhere in its tariff.²⁵

9. GSTC. On August 28, 1998, GTE filed Transmittal No. 260 establishing ADSL service in GSTC FCC Tariff No. 1. This offering is identical to the ADSL offering previously filed in GTOC Transmittal No. 1148.²⁶ Because a description of GTE's ADSL service offering is provided in the *GTE DSL Order*,²⁷ we will not repeat it here.

¹⁸ Bell Atlantic Description and Justification at Section 1A.

¹⁹ Bell Atlantic Description and Justification at Section 1A.

²⁰ Bell Atlantic Description and Justification at Section 1A.

²¹ BellSouth Description and Justification at 1; *see also* BellSouth Rebuttal at 4.

²² BellSouth Description and Justification at 1.

²³ BellSouth Description and Justification at 1.

²⁴ BellSouth Description and Justification at 1.

²⁵ BellSouth Description and Justification at 2.

²⁶ *See* GTOC FCC Tariff No. 1, Transmittal No. 1148 (filed May 15, 1998).

²⁷ *See GTE DSL Order* at ¶¶ 8-11.

10. Pacific Bell Telephone Company. On June 15, 1998, Pacific Bell filed Transmittal No. 1986, proposing to offer ADSL service, which it describes as an interstate, modem-based technology that adds high-speed data capability over traditional local exchange service.²⁸ It states that its ADSL service does not transmit through telephone switching equipment; rather, it provides a dedicated, direct connection to the end user's selected data provider and does not employ dialed digits.²⁹ More specifically, according to Pacific Bell, "the end user's modem is connected with either an ATM or 10BaseT connection to a network interface device/splitter at the end user's premises."³⁰ Pacific Bell explains that the ADSL service consists of the connection from the network interface device over an existing facility to ADSL equipment (the "Digital Subscriber Line Multiplexer" or "DSLAM") in the serving wire center, which is connected with the Pacific Bell ADSL connection point using ATM Cell Relay interface capabilities.³¹ It further explains that, in order to complete the ADSL path, the ISPs or network service providers can connect their networks to the Pacific Bell ADSL connection point using ATM Cell Relay services offered elsewhere in its tariff.³² According to Pacific Bell, its ADSL service provides end users a reliable and highly efficient way to reach host network sites, because it reduces holding time problems found in the existing dial path connection method of data network access.³³

B. Direct Cases

11. The ILECs argue that jurisdiction over a telecommunications service is determined by the end-to-end nature of the communication rather than the physical location of the technology.³⁴ They state that when the end-to-end communication is interstate and interexchange, like Internet traffic, the entire communication is interstate and interexchange,

²⁸ Pacific Bell Direct Case at 1.

²⁹ Pacific Bell Description and Justification at 4.

³⁰ Pacific Bell Description and Justification at 6.

³¹ Pacific Bell Description and Justification at 6.

³² Pacific Bell Description and Justification at 6-7.

³³ Pacific Bell Description and Justification at 4.

³⁴ Bell Atlantic Direct Case at 4, 7; BellSouth Rebuttal at 4, 7; *see also* Pacific Bell Direct Case at 4. We note that because the issues in the GSTC investigation are identical to the issues raised in the GTOC investigation, GTE attaches a copy of its Direct Case filed in response to the *GTOC Designation Order*, and formally incorporates, by reference, the Direct Case into this investigation. *See GTE Designation Order*, CC Docket No. 98-79, DA 98-1667 (Com. Car. Bur., rel. August 20, 1998).

subject to federal jurisdiction,³⁵ notwithstanding whether an enhanced service provider, including an ISP, provides part of the service.³⁶ Pacific Bell explains that when ADSL service is used to connect to the Internet through an ISP, an end user does not seek to reach only the ISP, but rather expects to communicate through the ISP to a destination on the Internet.³⁷ In addition, Pacific Bell and Bell Atlantic argue that communications through the Internet using ADSL service may be intrastate, interstate, or international.³⁸ They assert that when the interstate and intrastate components of a service cannot be regulated separately, and when state regulation would interfere with the Commission's exercise of its interstate authority, a service remains within the Commission's exclusive jurisdiction.³⁹ BellSouth states that the fact that an ISP is treated as an end user rather than a carrier under the access charge rules does not alter the jurisdictional analysis or outcome.⁴⁰ Because the purpose of ADSL is to originate and terminate interstate communications, BellSouth maintains that ADSL service falls within the Commission's definition of "access service" and, thus, is subject to federal regulation.⁴¹

12. The ILECs argue that federal tariffing of its ADSL service does not give rise to a price squeeze.⁴² Bell Atlantic argues that the cost of unbundled loops and similar network elements is not an incremental cost of ADSL service, because it does not reflect new costs incurred to offer that service; therefore, there are no loop costs to be imputed to ADSL service.⁴³ BellSouth observes that the Commission already has decided that, when a competitive LEC takes an unbundled loop from an incumbent LEC, it obtains exclusive use of the entire loop facility for all services and is thus entitled to the entire telecommunications revenue flow from that loop.⁴⁴

³⁵ Bell Atlantic Direct Case at 3, 8; BellSouth Rebuttal at 11-12; Pacific Bell Direct Case at 9.

³⁶ Bell Atlantic Direct Case at 3, 8; *see also* BellSouth Rebuttal at 7.

³⁷ Pacific Bell Direct Case at 6.

³⁸ Pacific Bell Direct Case at 4; Bell Atlantic Direct Case at 5.

³⁹ Pacific Bell Direct Case at 3-4; Bell Atlantic Direct Case at 5-6.

⁴⁰ BellSouth Rebuttal at 7.

⁴¹ BellSouth Rebuttal at 15.

⁴² BellSouth Rebuttal at 19; Bell Atlantic Direct Case at 13; *see also* Pacific Bell Direct Case at 16.

⁴³ Bell Atlantic Direct Case at 13.

⁴⁴ BellSouth Rebuttal at 20.

C. Comments

13. Many competitive LECs and ISPs urge the Commission to treat Internet traffic delivered via the ILECs' ADSL service offerings as one intrastate "local" call terminating at the ISP's local server, followed by a second, separate transmission from the ISP server to the Internet.⁴⁵ Specifically, these commenters argue that, for jurisdictional purposes, the end-to-end ADSL communication consists of two distinct components: an intrastate "telecommunications service," which ends at the ISP's local server, and an interstate "information service," which begins where the telecommunications service ends.⁴⁶ In addition, many competitive LECs observe that, because ISPs are permitted to purchase services from incumbent LECs under the same intrastate tariffs available to end users, ISP traffic delivered via the ILECs' ADSL service offerings constitutes local traffic for separations purposes.⁴⁷ Therefore, competitive LECs argue that such traffic must terminate at the ISP's point of presence.⁴⁸ Finally, several commenters maintain that the ILECs' ADSL service offerings must be tarified on the state level, because they do not qualify as "access services" under section 69.2 of the Commission's rules.⁴⁹

III. DISCUSSION

⁴⁵ See, e.g., ICG Opposition at 4; ALTS Opposition at 5; Hyperion Opposition at 8; Intermedia/e.spire Opposition at 4; and RCN Comments at 5.

⁴⁶ See, e.g., Focal Comments at 4-5 ("The telecommunications from the end user to the ISP terminates at the ISP because the ISP is an end user of telecommunications and a provider of information services. . . . The *information service* provided by the ISP is wholly separate from the local exchange *telecommunications service* provided by the local exchange carrier.") (Emphases in original); see also ICG Opposition at 4-6; ALTS Opposition at 5; Hyperion Opposition at 3; MCI/Worldcom Comments at 5; and ITC/KMC Opposition at 3. The Act defines "information services" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." 47 U.S.C. § 153(20) (emphasis added). "Telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used." 47 U.S.C. § 153(46).

⁴⁷ See, e.g., CompTel Opposition at 2-3; CIX Comments at 3; ICG Opposition at 5; ALTS Opposition at 5; and Hyperion Opposition at 5, 8.

⁴⁸ See, e.g., CompTel Opposition at 2-3; CIX Comments at 3; ICG Opposition at 5; ALTS Opposition at 5; and Hyperion Opposition at 5, 8.

⁴⁹ See ALTS Opposition at 4, 18-19; see also ICG Opposition at 6-7; Hyperion Opposition at 3; and ITC/KMC Opposition at 3.

14. Like the ADSL service offering filed in GTE Transmittal No. 1148, each of the ADSL service offerings here provide an end user subscriber with dedicated high speed bandwidth connection to another location, such as an ISP. The issues designated for investigation in each of the ADSL tariffs in this proceeding are identical to those designated in the GTE Transmittal No. 1148 investigation. No new arguments have been raised in the ILECs' direct cases or in the comments and oppositions filed in response to the direct cases. We, therefore, incorporate the reasoning set forth in the *GTE DSL Order* and find that the ADSL service offerings at issue here are interstate services, are properly tariffed at the federal level, and need not be transferred to the states in order to ensure proper consideration of price squeeze issues.⁵⁰

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to Section 204(b) of the Communications Act of 1934, 47 U.S.C. § 204(b), that Bell Atlantic Transmittal No. 1076, proposing to offer Infospeed DSL Service, is an interstate access service subject to this Commission's jurisdiction.

16. IT IS FURTHER ORDERED, pursuant to Section 204(b) of the Communications Act of 1934, 47 U.S.C. § 204(b), that BellSouth Transmittal No. 476, proposing to offer ADSL Service, is an interstate access service subject to this Commission's jurisdiction.

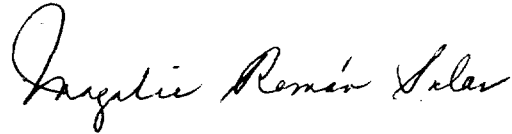
17. IT IS FURTHER ORDERED, pursuant to Section 204(b) of the Communications Act of 1934, 47 U.S.C. § 204(b), that GSTC Transmittal No. 260, proposing to offer GTE DSL Solutions-ADSL Service, is an interstate access service subject to this Commission's jurisdiction.

18. IT IS FURTHER ORDERED, pursuant to Section 204(b) of the Communications Act of 1934, 47 U.S.C. § 204(b), that Pacific Bell Transmittal No. 1986, proposing to offer ADSL Service, is an interstate access service subject to this Commission's jurisdiction.

19. IT IS FURTHER ORDERED, that the investigation and accounting order imposed by the Common Carrier Bureau in CC Docket Nos. 98-168, 98-161, 98-167, and 98-103 with regard to Bell Atlantic, BellSouth, GSTC, and Pacific Bell, respectively, for the designated issues as discussed herein IS TERMINATED.

⁵⁰ See *GTE DSL Order* at ¶¶ 16-27; see also GTE Direct Case at 7; Ameritech Comments at 9; Time Warner Comments at 4; US West Comments at 1; Bell Atlantic Comments at 2; Northpoint Comments at 1; USTA Comments at 2; and ACI/Firstworld Comments at 4.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Magalie Roman Salas".

Magalie Roman Salas
Secretary

APPENDIX A

Comments

ACI Corp.
America Online
Ameritech
Association for Local Telecommunications Services (ALTS)
AT&T Corp.
Bell Atlantic
BellSouth Corporation
California Public Utilities Commission
Commercial Internet eXchange Association
Competitive Telecommunications Association (CompTel)
e.spire Communications, Inc.
Firstworld Communications, Inc.
Florida Digital Network, Inc.
Focal Communications Corporation
Hyperion Telecommunications, Inc.
GTE Service Corporation
ICG Telecom Group
Intermedia Communications, Inc.
Internet Service Providers' Consortium (ISPC)
ITC^Delta Communications, Inc. (ITC)
KMC Telecom, Inc.
MCI/Worldcom, Inc. (MCI)
North Carolina Utilities Commission (NCUC)
Northpoint Communications, Inc. (Northpoint)
Pacific Bell Telephone Company (PacBell)
Public Utility Commission of Texas (TPUC)
Public Utility Commission of Oregon (OPUC)
RCN Telecomm Services, Inc.
Splitrock Services, Inc.
Sprint Corporation
Time Warner Communications
United States Telephone Association (USTA)
US West, Inc.

Separate Statement of Commissioner Harold Furchtgott-Roth Dissenting in Part

I support today's decision only to the limited extent that Bell Atlantic's, BellSouth's, GTE's and Pacific Bell's DSL tariffs include an interstate service offering properly filed at the federal level. I write separately, however, to express my continued concerns with the broader issues related to the jurisdictional nature of ISP traffic as they relate to this proceeding. As I stated in the earlier *GTE DSL Order*,¹ I believe this broader issue to be of enormous importance to many businesses, industries and consumers, and would have preferred that the Commission take a more cautious approach.

As in the *GTE DSL Order*, the Commission could have allowed these tariffs to go into effect as lawful provisions of a private service. Such a result would not have reached the broader issue of whether ISP traffic over this DSL service is inherently interstate. Neither would such a decision have required the Commission to address the one-call vs. two-call theories or adopt an end-to-end analytical framework. The Commission's analysis, however, requires it to incorporate its earlier conclusion that the communications at issue here do not terminate at the ISP's local server but continue to the ultimate destination or destinations, very often at a distant Internet website accessed by the end user.² The Commission analysis also requires it to incorporate such earlier conclusions as the fact that the facilities and apparatus used for DSL service offering may be located within a single state does not affect its jurisdiction.³

I continue to be concerned with the such sweeping statements about this agency's jurisdiction and even more importantly with the logical application of that framework. I also continue to believe that such statements could have broad and even unintended implications both for many state commission decisions and possibly for international settlement negotiations, where other countries have argued that a similar framework should dictate whether a call is international or not. Moreover, the Commission is still uncertain of the impact that these conclusions will ultimately have on other related state-federal issues, such as the separations process and the amount of traffic over the local loop that should be considered to be interstate.

As a narrower resolution of these tariffs is possible, I would have preferred to meet the statutory deadlines in a manner that does not commit this agency to a scheme whose logic may dictate a resolution of some issues that I am not prepared to endorse.

¹ GTE Tel. Operating Cos. GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC 98-292, Memorandum Opinion and Order (rel. Oct. 30, 1998); Separate Statement of Commissioners Harold Furchtgott-Roth and Gloria Tristani, Dissenting in Part.

² Memorandum Opinion and Order at para. 19.

³ *Id.*

**Separate Statement of
Commissioner Gloria Tristani**

Today's order finds that Bell Atlantic, BellSouth, and Pacific Bell may file tariffs for DSL service at the federal level. The order reaches this conclusion by relying on the Commission's decision last month, which declared that GTE's DSL service was properly tariffed at the federal level. The GTE Order generated concern among state commissions about the effect of that decision on the separations process, among other things. I support today's decision because I believe the DSL tariffs before us may properly be filed at the federal level. However, I fully expect the Commission to explore and address any potential consequences of the today's decision and the GTE decision in the near future.